IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

Civil Revision No. 110 of 2007.

Date of Decision: 27th November, 2007.

Pawan Kumar ***…Petitioner***

Versus

Janak Raj ***….Respondent.***

Coram

The Hon'ble Mr. Justice Dev Darshan Sud,Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Ajay Sharma, Advocate.

For the Respondents: Mr. N.K. Thakur, Advocate.

Dev Darshan Sud, Judge.

This revision petition has been preferred by the plaintiff against the order of the learned trial court passed on 30.6.2007 in Civil Suit No. 408 of 1998 dismissing the application filed by the plaintiff-petitioner for extension of time in complying with the directions issued in the decree passed in favour of the plaintiff.

The suit filed by the plaintiff for permanent prohibitory and mandatory injunction was decreed by the learned trial court on 11.9.2006. A further direction was issued that the

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

plaintiff shall make good deficiency of court fee within a period of 30 days, failing which, plaint shall be deemed to be rejected.

It is undisputed that the direction issued by the learned trial court was not complied with by the plaintiff for the reasons stated in the application which was dismissed. The plaintiff-petitioner moved an application purporting to be one under Section 151 of the Code of Civil Procedure stating that the condition imposed in the decree could not be complied with as the copy of the judgment and decree was received by the plaintiff-petitioner only on 28.5.2007, although it had been applied immediately after the pronouncement of judgment. The application was resisted by the respondents and vide impugned order the learned trial court has dismissed the application holding therein that the court had become *functus officio* and the decree could not be varied. For this purpose, court relied upon the judgment of the Hon'ble Supreme Court in **Mahant Ram Das** *vs*. **Ganga Das AIR 1961 SC 882** holding that the court had become *functus officio*.

I have heard learned counsel for the parties and have gone through the record. The facts before me are undisputed. The learned trial court has completely ignored the pleading of the plaintiff that the judgment was pronounced on 11.9.2006, copy was applied on 12.9.2006 and was supplied to the plaintiff-petitioner on 22.5.2007 which fact are available on the record and there is no evidence to the contrary. Photocopy of the judgment showing these dates was placed on the record before the learned trial court along with the application which has been totally ignored. This is rather an

unfortunate case. What was the plaintiff supposed to do? Surely, having applied for the judgment he was not expected to run after the Copying Agency or court officer for a copy of the judgment. The learned trial court should have been alive to the fact that the plaintiff-petitioner was incapacitated in non-apply of the copy in complying with the condition imposed upon him in the decree. Principle of law is now well settled. *Actus curiae neminem gravabit* meaning an act of court shall prejudice no man. It was the duty of court to have supplied the copy of the judgment in time in case his compliance was as mandatory as held by the learned trial court. See: **State of Gujarat** *vs*. **Jagan Bhai AIR 1966 SC 1631**.

In **Mohammed Gazi** *vs*. **State of M.P. and others (2000) 4 SCC 342** it has been held:-(*at page 347*)

> "7..The maxim of equity, namely, *actus curiae neminem gravabit*- an act of the court shall prejudice no man, ….. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. The other maxim is, *lex non cogit ad impossibilia*- the law does not compel a man to do what he cannot possibly perform. The law itself and its administration is understood to disclaim as it does in its general aphorisms, all intention of compelling impossibilities, and the administration of law must adopt that general exception in the consideration of particular cases. The applicability of the aforesaid maxims has been approved by this Court in *Raj Kumar Dey* v. *Tarapada Dey* (1987) 4 SCC 398 and *Gursharan Singh* v. *New Delhi Municipal Committee.* (1996) 2 SCC459.*"*

The provisions of Sections 148 and 149 of the Code of Civil Procedure are not applicable for enlargement of time for

conditions imposed in a decree. However, the application itself should have been treated as one of review and considered the fact that the compliance of the condition was impossible not for any fault on the part of the petitioner but for the act of the court. A copy of the judgment and decree was essential before any deposit could have been made.

In the facts and circumstances of the case, I find that the learned trial court has exercised jurisdiction vested in it illegally and against law. This revision is, therefore, accepted. The judgment and order of the learned trial court in revision is quashed and set aside. The application filed by the plaintiff-petitioner before the learned trial court praying for extension of time is allowed. The learned trial court is directed to grant two weeks time to the petitioner from the date of presentation of this order to affix the court fee as ordered. There shall be no order as to costs. Record of the trial court be sent back immediately.

27th November, 2007. **Dev Darshan Sud),**
(cm) **Judge.**